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No. 868

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

CHARLES LEROY MELQUIST
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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OPINION OF THE COURT BELOW

The Opinion of the Supreme Court of Illinois is reported at 26 Ill. 2d 22, 185 N.E. 2d 825. (See Appendix I, page 15, *infra.*)

STATEMENT OF JURISDICTION

The Judgment of the Supreme Court of Illinois was entered on September 28, 1962; a timely Petition for Rehearing was denied November 29, 1962.

The statutory provision believed to confer upon this Court, jurisdiction to review the judgment in question by Writ of Certiorari is Title 28, United States Code, Section 1257(3).

QUESTION PRESENTED

In view of this Court's decision in *Wong Sun* v. *United States*, 83 S. Ct. 407, are statements taken from State prisoners unlawfully detained by State officers in violation of a Writ of Habeas Corpus to be excluded upon the command of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be • • • compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; • • •

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Federal Rules of Criminal Procedure, Rule 5(a), 18 U.S.C.A.

Appearance before the Commissioner. An officer • • • or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States.

Illinois Revised Statutes (1961), Chapter 38, Paragraph 660.

When an arrest is made without a warrant, either by an officer or private person, the person arrested shall, without unnecessary delay, be taken before the nearest magistrate in the county, who will hear the case, for examination, and the prisoner shall be examined and dealt with as in cases of arrests upon warrants.

STATEMENT OF THE CASE

As this Court noted in *Ashcraft* v. *United States*, 322 U.S. 143, 152, "* * * disputes [relating to the details of what transpired within the confession chamber] * * * are an inescapable consequence of secret inquisitorial practices." Much of what transpired outside of the various rooms where the petitioner was interrogated is not in dispute, however. The Petitioner, twenty-one years old with a two-year high school education and no prior experience with the law, submitted himself to the Addison, Illinois, Police Department, at their request, at approximately 11:30 P.M. on Sunday, November 16, 1958. The day prior to that the mutilated body of Bonnie Leigh Scott had been discovered in a forest preserve in Cook County, Illinois. The Petitioner had read and heard over television about the discovery of the body. (Abst. 318) When the Addison Police Department called and asked him to come to the station he drove there in his own car. Petitioner was questioned at the station from approximately 12:15 A.M. until 1:15 that morning by Sergeant Devaney of the Addison Police Department. During this period the Petitioner verbally denied any knowledge of the disappearance of Bonnie Scott and executed Defendant's Exhibit 1, statement denying knowledge. (Abst. 27) Petitioner was then told to remain in the station for further interrogation; although free to roam about, Petitioner was not free to leave the station. (Abst. 28) At 2:00 A.M. the Petitioner was interrogated by Chief Smith of the Cook County Sheriff's Office, Devaney and Officer Craig of the Addison Police. Until approximately 3:00 A.M. the Petitioner denied any knowledge in the matter under investigation. At this time, Petitioner permitted Smith to keep his car, and

the Chief of the Addison Police Department drove him home. Petitioner was instructed to return to the police station that morning at 10:00. (Abst. 20, 33, 49)

Petitioner returned to the station, as he had been instructed to do, at 10:00 A.M. His father, who had accompanied him there, waited outside. Petitioner was interrogated beginning at 11:30 by Smith, Devaney, Captain Roche of the Cook County Sheriff's Office and an Officer Haney. This period of interrogation lasted until about 2:00 P.M. It was interrupted once by a fifteen-minute smoke break, described by Devaney as an "ease-off period." (Abst. 21) Petitioner was given a lie detector test during this period and, as before, he denied any knowledge about the disappearance of Bonnie Scott. (Abst. 29)

At 2:00 that afternoon Petitioner along with Smith, Roche and Devaney departed for the office of John Reid, a private polygraph expert in the City of Chicago. On the way they had a meal. They arrived at Reid's office at approximately 4:15. Reid then questioned the Petitioner and administered lie detector tests to him until approximately 6:45 P.M. when the Petitioner allegedly confessed the killing of Bonnie Scott. A written statement was then taken. (Abst. 59, 60)

The Petitioner and the various officers left Reid's office at approximately 9:00 P.M. and went to the office of Frank Ferlic, the First Assistant State's Attorney of Cook County, although the confession given to Reid recited that the killing took place in Du Page County, Illinois. A second statement was taken from the Petitioner in Ferlic's office at about 10:00 P.M. Only Cook County officials were present during this confession. (Abst. 72) The two Cook County Sheriff's officers, Smith and Roche then took Peti-

tioner to the Bedford Park Station of the Cook County Sheriff's Police. They arrived there sometime after 11:00 P.M. Here, several newspaper reporters were allowed to question Petitioner. At about 1:00 A.M. he allegedly confessed the killing again, remarking that it was an accident, that he had been well treated by certain of the investigating officers, and also that he was extremely tired. Petitioner appeared exceptionally tired to one of the reporters. (Abst. 54)

At about 10:00 that morning Petitioner was taken from the Bedford Park Station to Villa Park in Du Page County in Smith's car by Smith, Roche, Bauer, the First Assistant State's Attorney of Du Page County, Chief Holler of the Villa Park Police Department and Lange of the Du Page County Sheriff's office. (Abst. 246) Prior to this time Petitioner's father had retained counsel for his son and at 10:00 that morning the father and counsel appeared before the Chief Justice of the Criminal Court of Cook County (the court having jurisdiction to issue a writ of habeas corpus). Counsel filed a petition for a writ of habeas corpus requiring the return of the Petitioner and secured an order upon the Sheriff of Cook County to produce the Petitioner in court at 12:00 that noon. The Bedford Park Station was then called and counsel was informed that Petitioner was still in the station. (Abst. 314) Captain Smith, although admitting that he had been informed that counsel was going to file a petition for a writ of habeas corpus before he left the Bedford Park Station that morning, testified that no official information that a petition was filed or writ issued was received. When the group containing Petitioner arrived in Villa Park, however, Smith was informed that the Chief Justice of the Criminal Court of Cook County had ordered the writ issued. (Abst. 246) At that moment Roche had physical custody of the Petitioner. (Abst. 69)

In ruling upon the Petitioner's contention that his constitutional rights were violated by the taking of other confessions after he arrived in Villa Park, the Supreme Court of Illinois said:

> "• • • We are of the opinion that the confessions were not rendered inadmissible by reason of the fact that Roche turned the defendant over to the Du Page County officials after being informed that a writ had been issued. There was no direct testimony at the hearing to prove that a writ had actually been issued. Even if we were to assume that a writ had been issued and to further assume that Roche should have honored the writ simply because he was informed of the issuance, it is clear that the Reid and Ferlic confessions are in no way affected, since they were made prior to the alleged issuance of the writ." Appendix I, page 19-20, *infra.*

Roche maintained physical custody of the Petitioner while they proceeded, en masse, from Villa Park to the Petitioner's home where two pillows were taken, and to the area where the body was discovered for a so-called re-enactment confession. (Abst. 69) It was at the re-enactment that the Petitioner made several allegedly damaging corroborative admissions, including demonstrating his knowledge as to where the body was found and its condition. (Abst. 237) After the re-enactment Petitioner was turned over to the custody of the Du Page County officials. (Abst. 69) He was then taken to sign the confession he had given Ferlic the night before. Following this Petitioner was taken to the Du Page County jail where at 4:15 P.M. he was first permitted to confer with the counsel retained for him by his family. (Abst. 314)

REASONS FOR GRANTING WRIT

The seeds of the issue presented by this petition were planted by the Court's decisions in *McNabb* v. *United States,* 318 U.S. 332, and *Mallory* v. *United States,* 354 U.S. 449. They were nurtured by the decisions in *Spano* v. *New York,* 360 U.S. 315, and *Mapp* v. *Ohio,* 367 U.S. 643. The issue has been brought to fruition by *Wong Sun* v. *United States,* 83 S.Ct. 407, and the thrust of this decision, as it applies to state procedures, must be defined by this Court. Specifically, this Petition questions the extent to which the decision in *Wong Sun,* that statements taken from a defendant who has been unlawfully arrested and detained by federal agents must be excluded, applies to the States. Are statements taken from state prisoners unlawfully detained by state officers to be excluded upon command of the Fourteenth Amendment as are physical items of evidence? See, *Mapp* v. *Ohio,* 367 U.S. 643.

This issue was squarely presented to the Illinois Supreme Court. (See, Brief and Argument for Plaintiff in Error, pp. 90-92; Reply Brief, pp. 11-12; Petition for Rehearing, pp. 3-4.) and rejected by that court on the basis of its prior holding in *People* v. *Miller,* 13 Ill. 2d 84. (Appendix I, p. 20, *infra.*) That Court, however, rendered its decisions affirming the conviction of the Petitioner and denying rehearing prior to the opinion of this Court in the *Wong Sun* case.

This Court has long ago discarded the notion that brutality such as was found in *Brown* v. *Mississippi,* 297 U.S. 278, is the only criteria by which it may be judged whether or not a confession was taken in violation of the Fourteenth Amendment. See, *Fikes* v. *Alabama,* 352 U.S. 191, 197;

Chambers v. *Florida*, 309 U.S. 227; *Spano* v. *New York*, 360 U.S. 315, 321. The issue posed herein, however, while related to the problem of a long period of detention and interrogation without the opportunity of appearance before a judicial officer*, is one of deeper significance, and, as noted, one which has only recently been determined for federal officers. *Wong Sun* v. *United States*, 83 S. Ct. 407. It is no longer open to question that a confession or statement made to a federal officer following an unlawful arrest is inadmissible in a federal prosecution; patent also, we believe, is the proposition that such exclusion is founded on constitutional grounds rather than on the policy considerations often advanced as the basis of the State courts' rejections of the McNabb-Mallory rule.** See, *People* v. *Spano*, 4 N.Y. 2d 256 (1958).

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* Illinois law (Ill. Rev. Stat. 1961, Ch. 38, par. 660), requires that a person arrested without warrant be taken before a magistrate "without unnecessary delay."

** *McNabb* v. *United States*, 318 U.S. 332, and *Mallory* v. *United States*, 354 U.S. 449, are admittedly not decisions of constitutional purport. Mr. Justice Frankfurter, speaking for the Court in the *McNabb* case, quite clearly expressed this when he wrote:

> "Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded." 318 U.S. at 341.

This principle undoubtedly bolstered the conclusion of the Illinois Court that the test of admissibility is the trustworthiness of the confession obtained.

> "Whether a confession is involuntary is a preliminary question which must be decided by the trial court from evidence heard outside the presence of the jury, and the real question presented to the court is not whether there is evidence of threats or promises, but whether there has been any threat or promise of such a nature that a prisoner would be likely to tell an untruth from fear of threat or hope of profit from the promise." *People* v. *Miller,* 13 Ill. 2d 84, 96 (1958).

This same *Miller* case led the Illinois Supreme Court to reject Petitioner's claim that the confessions taken after the writ of habeas corpus issued were taken during a period of unlawful detention and were thus inadmissible. The test of admissibility in Illinois is voluntariness and voluntariness is determined by the likelihood of trustworthiness. Subsequent to the decision of the Illinois Supreme Court in *Miller,* however, this Court said:

> "The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent trustworthiness. It also turns on the deep rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." *Spano* v. *New York,* 360 U.S. 315, 320-21.

No more forceful statement as to the inherently coercive effect of long periods of unlawful detention could have been made. And while no statement to the precise effect was made in *Spano,* no rule closer to that of McNabb-Mallory has yet been imposed upon the States by virtue of the Fourteenth Amendment.

Implicit in any consideration of what limitations the Fourteenth Amendment imposes upon state police action must be a concern with *Mapp* v. *Ohio,* 367 U.S. 643. The decision in *Mapp,* enforcing the Fourth Amendment and the exclusionary rule against the States through the Fourteenth Amendment, recognizes, according to Mr. Justice Black, "The close interrelationship between the Fourth and Fifth Amendments, as they apply to this problem * * *" 367 U.S. at 662. And the decision of the Court, as expressed by Mr. Justice Clark, suggests this same interrelationship.

> "We find that as to the Federal Government, the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an 'intimate relation' in their perpetuation of 'principles of humanity and civil liberty [secured] * * only after years of struggle.' * * * [citing cases] They express 'supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy.' * * * [citing cases] The philosophy of each Amendment and of each freedom is complementary to, although not dependent, upon, that of the other in its sphere of influence—the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence." 367 U.S. at 656-7.

As a consequence the rule followed in *Wong Sun* as to federal officers should have the same binding effect on State officers by virtue of the Fourteenth Amendment. Admittedly the decision in *Wong Sun* was reached without any consideration of the Fifth or the Fourteenth Amendments. The statements in *Wong Sun* were expressly excluded because "* * * the Fourth Amendment * * * protect[s] against the overhearing of verbal statement[s] as well as

against the more traditional seizure of 'papers and effects.'" 83 S.Ct. at 416. But if the Fourth and Fifth Amendments are "interrelated" or "complementary" the exclusionary rule effective for one should operate for the other. And *Wong Sun* is no less capable of being equated with the present case because of an illusory distinction between an illegal arrest and a detention infected by a callous disregard of the "great writ." The right to be arrested only upon "probable cause" or "reasonable grounds" finds no constitutional expression save in the historic and studied consideration of this Court. The rights guaranteed by the writ of habeas corpus transcend the Constitution. Detention in disregard of the writ is no less unlawful than arrest without probable cause.

As a result of the disregard of the writ in this case the Petitioner was denied the opportunity to confer with counsel retained by his parents until the police were through interrogating him. Although *Spano* v. *New York* did not reach the question of the denial of counsel in a capital case (See, *Powell* v. *Alabama*, 287 U.S. 45,) the cogency of the argument cannot be ignored. See, *Spano* v. *New York*, 360 U.S. 315, 324 (concurring opinion of Mr. Justice Douglas), 326 (concurring opinion of Mr. Justice Stewart); *People* v. *Di Biasi*, 7 N.Y. 2d 544, 166 N.E. 2d 825 (1960); *People* v. *Waterman*, 9 N.Y. 2d 561, 175 N.E. 2d 445 (1961). And the harm done to Petitioner by disregarding the writ and thereby denying him the assistance of counsel is immeasurable. Cf. *Gallegos* v. *Colorado*, 370 U.S. 49. The alleged conduct of the petitioner during the re-enactment was the principal evidence used to corroborate his prior confessions. Nowhere, perhaps, would the wisdom of Mr. Justice Frankfurter be more applicable:

> "Presumably, whoever the police arrest they must arrest on 'probable cause.' It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause'." *Mallory* v. *United States*, 354 U.S. 449, 456.

So also in the present case, if the confession to Reid justified the arrest of the petitioner, as Smith testified it did, at 8:00 P.M. before the group left Reid's office, then no emergency or unusual circumstance justified the failure to bring him before a court of competent jurisdiction, as the writ of habeas corpus ordered. A determination by this Court as to the effect on the Fourteenth Amendment of State action in taking a confession after a period of patent unlawful detention is urgently needed in light of the Court's decision in *Wong Sun* v. *United States*.[8] Without a decision defining the breadth and scope of *Wong Sun* the delicate area of Federal-State relations in the vital field of confession admissibility is apt to become more clouded.

CONCLUSION

For the above and foregoing reasons it is prayed that a writ of certiorari issue from this Court to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

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APPENDIX I.

OPINION OF THE SUPREME COURT OF ILLINOIS

The People of the State of Illinois, Defendant in Error,
v. Charles Melquist, Plaintiff in Error.

Mr. JUSTICE KLINGBIEL delivered the opinion of the court:

The defendant, Charles Melquist, was tried by jury in the circuit court of Du Page County and convicted of the crime of murder. The jury set the penalty at 99 years in the penitentiary. We have issued a writ of error to review the judgment of conviction.

The defendant, who was 21 years of age, was charged with killing one Bonnie Scott. The evidence showed that Bonnie, a 15-year-old girl, left her home on September 22, 1958 at approximately 7 P.M. She was never seen alive after that time but on November 15 her body was discovered in a wooded area about 30 feet away from a highway. The body was badly decomposed and the head had been severed from the body and was found some distance away from the body. There were two deep wounds on the body extending from the chest to the abdomen. Bonnie's watch was found about 30 feet away from her body. Due to the condition of the body the pathologist who conducted the autopsy was unable to determine the cause of death. However, he was of the opinion that the head had been severed after death and also that the cuts on the body had been inflicted after death.

On November 16 at about 11:30 P.M., the defendant went to the police station in Addison, Illinois, at the request of the authorities. He was questioned from about 12:15 to 1:00 in the morning and after about an hour,

during which the officers were questioning other persons, the questioning of the defendant was resumed at about 2:00 A.M. and continued until about 3:00 A.M. During both of these periods the defendant denied any knowledge of either the disappearance or death of Bonnie Scott. At about 3:00 A.M. the defendant was released and was driven to his home by the chief of police. The authorities requested that defendant return to the station at 10:00 that morning and at that time he returned to the station with his father. He was questioned for about an hour and after a 15-minute break he was questioned again, and in both of these conversations he denied any knowledge of the death or disappearance of Bonnie. At about 2:00 in the afternoon the officers took the defendant to the office of John Reid, a polygraph expert. They stopped on the way to Reid's office and had a meal and arrived at the office about 4:00 P.M. The defendant was questioned by Reid for about two hours and during this interrogation, the defendant confessed that he had killed Bonnie Scott. His statement was typed by Reid's secretary and, after reading the statement, the defendant signed it. In that statement he said that he and Bonnie were parked in the defendant's car in his driveway on September 22nd and were "goofing around," tickling each other and wrestling. The defendant said that he grabbed a pillow and held it over Bonnie's face. He said he must have held it there too long because the next thing he knew she wasn't moving any more. When he realized she was dead he drove out Mannheim Road to about 95th Street and dumped her body out of the car, after taking off her clothes. He kept the clothes in his car and two days later he burned the clothes someplace in the vicinity of his home. He said that he went back about 4 weeks later to bury the body and found that the body was badly deteriorated and the

head had been almost severed from the body as if the flesh had been eaten away. He cut the head off the body and then had an urge to cut some more and made about an 8 or 12 inch cut in the body.

After signing the statement at Reid's office, the defendant and the officers left the office at about 9:00 P.M. and went to the office of Frank Ferlic, the first assistant State's Attorney for Cook County, where another statement was taken from the defendant but was not signed at that time. This statement was practically the same as the first statement insofar as the death of the deceased and the subsequent events were concerned, except that defendant also stated that Bonnie had been wearing a watch and a necklace. He said that he had thrown the watch about 30 feet from where he had dumped the body and had thrown the necklace out of the car on the way home. In this statement, defendant went into considerable detail concerning his prior relationship with Bonnie.

At about 11:00 P.M. the defendant was taken to the Bedford Park sheriff's station where he was interrogated by several newspaper reporters. He informed the reporters that he was tired but told them he had been treated "swell." He was held in custody at the Bedford Park station overnight and about 10:00 the following morning he was taken to Villa Park where he was served with a murder warrant. He was then taken to his home where he located two small pillows. He was asked which one of these pillows he had used to smother the deceased and he replied that he could not tell, because they were identical, but that one of those pillows was the one he had used. The defendant was then taken to the scene where Bonnie's body had been discovered where he pointed out a spot on the ground and told the officers that that was the place

where he had left Bonnie Scott. The spot indicated was the exact place where the body had been found. The defendant told the officers that he had thrown his knife out of his car and he attempted to show them where he had disposed of the knife. He also attempted to point out the place where he had burned Bonnie's clothing but the officers were unable to find the knife or the burned clothing. Following this trip the defendant was returned to Villa Park where he signed the confession he had made in Ferlic's office.

The defendant contends that his confessions should not have been admitted in evidence. It is not contended that the confessions were induced by force or by promises of leniency. The argument here is that the confessions were obtained after extensive questioning which tired the defendant to such an extent that his power to resist was weakened. In our opinion the record does not sustain the defendant's contention. He was questioned for only about 2 hours on his first visit to the police station and was permitted to return home. When he returned with his father later that morning, he was questioned only for about 2 hours in the police station before being taken to Reid's office. The questioning in Reid's office commenced about 2½ hours later and lasted a little over 2 hours. Thus it appears that the defendant had been questioned only for about 6 hours altogether, and that substantial intervals of time elapsed between the 3 occasions when defendant was questioned. His second confession in Ferlic's office was made shortly after the Reid confession and there is no evidence of any lengthy interrogation leading to this confession. After he left Ferlic's office, the defendant told the reporters he had been treated "swell" although he complained of being tired. The defendant did not testify

at the hearing on the motion to suppress his confessions and there was no testimony at that hearing which in any way tends to prove that the defendant confessed because he was so worn-out that he had lost his power to resist. Defendant also urges that he was being held illegally and that this illegal detention renders the confessions inadmissible. In support of this argument the defendant contends that the authorities of Du Page County illegally retained custody of the defendant notwithstanding the fact that the criminal court of Cook County had issued a writ of *habeas corpus* commanding the production of the defendant before that court. The only testimony at the hearing on the motion to suppress the confessions relating to this issue was the testimony of John Roché, a captain on the Cook County sheriff's police. He testified on cross-examination that the first time he had any information concerning a writ of *habeas corpus* was after the defendant had been returned from the Bedford Park station to Villa Park on November 18. Although he was informed by someone that a writ had been issued, no writ was ever served on him or anyone else. He then turned the defendant over to Du Page County officials. If a writ of *habeas corpus* had in fact been issued, it was issued after the defendant had made and signed the confession in Reid's office and after he made his confession in Ferlic's office, although he signed the latter confession sometime after the writ had allegedly been issued. The re-enactment at the scene where the body had been discovered also took place thereafter. We are of the opinion that the confessions were not rendered inadmissible by reason of the fact that Roche turned the defendant over to the Du Page County officials after being informed that a writ had been issued. There was no direct testimony at the hearing to prove that a writ had been issued and to further assume that

Roche should have honored the writ simply because he was informed of its issuance, it is clear that the Reid and Ferlic confessions are in no way affected, since they were made prior to the alleged issuance of the writ.

The defendant's contention that the signed Ferlic confession and the re-enactment were inadmissible is based largely upon the opinions of the United States Supreme Court in *McNabb* v. *United States*, 318 U.S. 332 and *Mallory* v. *United States*, 354 U.S. 449. As we have pointed out, these cases deal with problems of Federal criminal procedure and do not require a holding that confessions in State court prosecutions be held invalid merely because they are obtained during a period of illegal detention. (*People* v. *Miller*, 13 Ill. 2d 78.) We are of the opinion that the evidence at the hearing clearly established that defendant's confessions were voluntary and they were therefore properly admitted in evidence.

The defendant also contends that even if the confessions were admissible, the prosecution failed to establish the *corpus delicti* by any evidence outside of the confessions. The *corpus delicti* of the crime of murder consists of two essential elements: the fact of death, and the fact that the death was produced by the criminal agency of some person. The defendant argues that the State completely failed to prove that the death of Bonnie Scott was the result of a criminal act. This contention is based upon the fact that it was impossible to establish the cause of death because of the decomposed condition of the body, a factor which could have worked to the advantage of the defendant. The rule applicable in cases such as this is that a voluntary confession is insufficient to support a conviction without corroborating evidence. However, it is not necessary that the *corpus delicti* be established by evidence completely independ-

ent of that which tends to connect the accused with the crime. If there is corroborating evidence which tends to confirm the circumstances related in the confession, both may be considered in determining whether the *corpus delicti* is sufficiently proved. (*People* v. *O'Neil*, 18 Ill. 2d 461.) In the defendant's confession he admitted killing the deceased. He stated in his confession that he had thrown the deceased's watch about 30 feet away from the place where he had put the body and the watch was found about that distance from the body. The defendant was also able to point out the exact spot where the body had been found and identified a pillow from his home as the one he had used to smother the deceased. These circumstances are similar to those in the *O'Neil* case which involved a prosecution for arson, in which the defendant pointed out to the police the exact spot where the fire had started and re-enacted the crime. We there held that these corroborating circumstances, together with defendant's confession, were sufficient to establish a *corpus delicti*. We are of the opinion that there was sufficient corroborating evidence in the present case outside of the defendant's confession to establish the *corpus delicti*.

The defendant further contends that he was deprived of his right to a fair and impartial trial and deprived of due process of law. In support of this contention it is alleged that the fact that defendant had been subjected to a lie-detector test was improperly brought out before the jury. John Reid's secretary testified that the first time she saw the defendant was when he was brought into the "laboratory". The defendant argues that the use of the term "laboratory" must have conveyed the impression to the jury that the defendant had been subjected to a lie-detector test. In our opinion, the term "laboratory" would not necessarily convey to the jury the fact that the defendant

had taken a lie-detector test, and we find little merit in defendant's contention. The record also shows that a newspaper reporter testified for the State as to a conversation he and other reporters had with the defendant at the Bedford Park station. After testifying as to certain statements made by the defendant, the prosecutor asked him whether he recalled any other questions which were asked the defendant and any other answers which he gave, and the reporter replied that the defendant was asked, "If you were guilty, why did you take a lie test?" Defendant's counsel objected and moved for a mistrial, and after a recess, during which the question was argued by counsel, the court denied the motion. There is nothing in the record to suggest that the prosecutor deliberately elicited this reply or that he had any knowledge that the witness would so testify. We are of the opinion that the reply of the witness was not a sufficient ground for declaring a mistrial, even though it conveyed to the jury the impression that the defendant had taken a lie-detector test. Cf. *People* v. *Flowers*, 14 Ill. 2d 406.

The defendant argues that the trial court should have deleted portions of the defendant's confessions before permitting them to be admitted in evidence. In the confession which the defendant made at Ferlic's office, the defendant stated that he had first met Bonnie in June, 1957, more than a year before her death. A short time after he met her he took her to a forest preserve, and while they were parked there he kissed her and fondled her. About a week later he again took her to the forest preserve where the same acts were repeated. According to the statement, the defendant attempted at this time to have intercourse with Bonnie but she refused. The defendant contends that these acts constituted the criminal offense of taking indecent liberties with

a minor and it is urged that since this offense was unrelated to the offense for which he was on trial that all references to these acts should have been deleted from the statement before it was submitted to the jury. While it is true that proof of unrelated criminal offenses is normally improper and any reference to such offenses should be deleted from a statement, there are well defined exceptions to this rule. Evidence of other crimes is admissible to prove design or motive where these matters are in issue or relevant. (*People* v. *Davis*, 413 Ill. 391.) In our opinion the fact that the defendant had attempted to have intercourse with the deceased tends to establish a motive for the crime and casts doubt upon his statement in his confession that he smothered the girl accidentally while tickling her. We therefore are of the opinion that the trial court correctly ruled that these portions of the confessions need not be deleted.

The defendant also contends that he was deprived of a fair and impartial trial by reason of a remark made by a spectator. During the direct examination of the defendant he was asked whether one of the reporters had asked him, "Charie, did you do it?" and whether he had replied, "I did it." The defendant answered "I did not." The record then shows that a spectator said "He's a damn liar." In the defendant's motion for a new trial he contended that this remark in the presence of the jury was so prejudicial as to require a new trial. It was brought out at the hearing on the motion for a new trial that neither counsel for the defendant, nor the court, nor the prosecutor heard that remark, although it was heard by the court reporter. The court stated that during the entire trial of the case, which took a considerable period of time, there were no outbursts or demonstrations of any kind other than the one remark.

The court stated that he had not heard the remark but that the court reporter had told him during a recess that he had heard it and the court advised him that it was a part of the official record and should be included in the record. The court stated that he was unable to say whether the remark was heard by the jurors or whether, if it had been heard, it could have affected their judgment. In view of the fact that it appears doubtful that this remark was even heard by any of the jurors, we do not believe that it is necessary for us to even speculate as to the possible prejudicial effect of that remark, and we are of the opinion that the trial court correctly denied the motion for a new trial on that ground.

The defendant contends that even if his confession was properly admitted in evidence, the most it shows is that the killing was either accidental or manslaughter. We have heretofore held that where the only testimony of the actual facts of a homicide is by the defendant, the jury is not compelled to accept his statements, but may consider the surrounding circumstances, and also the probability or improbability of his narration. (*People* v. *Uher,* 375 Ill. 499.) The statement by the defendant that he and the deceased were playfully tickling each other and having a pillow fight and that he smothered the deceased in the course of this activity could well have been considered by the jury as highly improbable. The jury could have believed that the defendant killed the deceased deliberately and were not bound to accept his version of the deceased's death.

After a careful consideration of all assignments of error, we are satisfied that the defendant received a fair trial, free from prejudicial error. The judgment of the circuit court of Du Page County is therefore affirmed.

Judgment affirmed.